

Appeals Board: Moldawer vs CEO

BLUO Relevant Sections

SECTION 6. CONSTRUCTION STANDARDS

A. Height:

No principal or accessory conventional structure shall exceed two stories in height nor shall any structure exceed 35 vertical feet (See definition of building height), except for municipal buildings, steeples, silos, detached barns, water towers or other accessory structures not designed for human habitation.

Section 17. Definitions

B. Definitions of key terms

Building Height: The vertical distance between the highest point of the structure and the average final grade around the foundation, or the average grade of the original ground adjoining the building, whichever is greater.

MUBEC Relevant Section

SECTION 4. APPLICATION OF THE MUBEC, MUBC and MUEC

3. A municipality of up to 4,000 residents may not adopt or enforce a building code other than the Maine Uniform Building Code, the Maine Uniform Energy Code or the Maine Uniform Building and Energy Code. Notwithstanding any other provision of this chapter or Title 25, Chapter 314, the provisions of the Maine Uniform Building Code, the Maine Uniform Energy Code or the Maine Uniform Building and Energy Code do not apply in a municipality that has 4,000 or fewer residents except to the extent the municipality has adopted that code pursuant to this subsection.

October 29 Motions

Larissa made the motion:

“I move to uphold the appeal insofar as the CEO did not correctly interpret the building height definition in the BLUO because she did not calculate the distance between the highest point on the structure to the original grade versus the highest point on the structure to the finished grade to determine if there was a difference.”

Jay second the motion Vote 4-1 (Griff)

Jon made the motion:

“I move to remand this matter to the CEO for reconsideration.”

Jay second Vote 4-0-1 (Griff abstained)

Questions

1. What is the significance of the decisions of the Board of Appeals in relation to subsequent potential rulings by the courts?

Elaboration: If a proper, lawful and accurate decision was given by the Board of Appeals, and that decision was ignored, leading the issue to find its way to the courts, would it be likely for the courts to support and enforce the decision of the Board of Appeals?

2. Does the Board of Appeals set precedent, or permanently clarify or codify the language of an ordinance when it makes a determination?

Elaboration: During deliberations of the Moldawer appeal, some felt that the language used in the Building Height definition of the BLUO (building and land use ordinance) was unclear and could be understood in two different ways. The Board of Appeals in its first motion stated that the CEO erred in her application of the BLUO by not taking into consideration both the finished and original elevations of grade in her height calculations. Therefore, does the clarified definition of Building Height in the BLUO become the standard that must be applied in any reconsideration of the current issue and subsequent practice by the CEO in any building height assessment?

3. What is the responsibility of the CEO to comply with determinations made by the Board of Appeals?

4. Can the determinations of the Board of Appeals be disregarded by a CEO, when the CEO is reconsidering the issues remanded to them?

5. What role, if any, does the language of MUBEC play in decisions related to building and land use issues in Lamoine?

Elaboration: The Town of Lamoine has not formally adopted MUBEC, and the Town is not compelled to adopt MUBEC as per my reading of Section 4 paragraph 3 of the document linked here: https://www.maine.gov/dps/bbcs/documents/FINAL2MUBEC_Ch_12018.pdf.

6. If MUBEC plays a part in building and land use issues in Lamoine. Does the Lamoine BLUO supercede MUBEC if the language on any given issue is more restrictive?

7. Can the Board of Appeals send decisions and recommendations directly to the Board of Selectmen, or must they be forwarded to the CEO?